

PATENT COOPERATION TREATY

From the:
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

Rec'd PCT/PTO 06 APR 2005

PCT

To:

WRAY & ASSOCIATES
Level 4 The Quadrant
1 William Street
PERTH
WA 6000

WRITTEN OPINION
(PCT Rule 66)

Applicant's or agent's file reference 109422	<div style="border: 1px solid black; padding: 5px; display: inline-block;"> ENTERED 28 APR 2004 INFORMA </div>	<div style="border: 1px solid black; padding: 5px; display: inline-block;"> REPLY DUE 28 APR 2004 </div>	Date of mailing (day/month/year) 28 APR 2004
International Application No. PCT/AU2003/001324	International Filing Date (day/month/year) 8 October 2003	Priority Date (day/month/year) 8 October 2002	
International Patent Classification (IPC) or both national classification and IPC Int. Cl. ⁷ G01N 33/52, 21/64, 33/02, 33/14			
Applicant: THE WESTERN AUSTRALIAN CENTRE FOR PATHOLOGY AND MEDICAL RESEARCH et al			

1. This written opinion is the **first** drawn by this International Preliminary Examining Authority.
2. This opinion contains indications relating to the following items:

I	<input checked="" type="checkbox"/>	Basis of the opinion
II	<input type="checkbox"/>	Priority
III	<input type="checkbox"/>	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
IV	<input type="checkbox"/>	Lack of unity of invention
V	<input checked="" type="checkbox"/>	Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
VI	<input type="checkbox"/>	Certain documents cited
VII	<input type="checkbox"/>	Certain defects in the international application
VIII	<input type="checkbox"/>	Certain observations on the international application
3. The **FINAL DATE** by which the international preliminary examination report must be established according to Rule 69.2 is:
8 February 2005
4. The applicant is hereby **invited to reply** to this opinion.

When? See the **Reply Due** date indicated above. However, the Australian Patent Office will not establish the Report before the earlier of (i) a response being filed, or (ii) one month before the **Final Date** by which the international preliminary examination report must be established. The Report will take into account any response (including amendments) filed before the Report is established. **If no response is filed by 1 month before the Final Date**, the international preliminary examination report will be established on the basis of this opinion.

Applicants wishing to have the benefit of a further opinion (if needed) before the report is established should ensure that a response is filed at least **3 months before the Final Date** by which the international preliminary examination report must be established.

How? By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3. For the form and the language of the amendments, see Rules 66.8 and 66.9.

Also For an additional opportunity to submit amendments, see Rule 66.4. For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4bis. For an informal communication with the examiner, see Rule 66.6.

Name and mailing address of the IPEA/AU AUSTRALIAN PATENT OFFICE PO BOX 200, WODEN ACT 2606, AUSTRALIA E-mail address: pct@ipaaustralia.gov.au Facsimile No. (02) 6285 3929	Authorized Officer ROSS OSBORNE Telephone No. (02) 6283 2404
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I. Basis of the opinion**1. With regard to the elements of the international application:***

- ☒ the international application as originally filed.
- ☐ the description, pages , as originally filed,
pages , filed with the demand,
pages , received on with the letter of
- ☐ the claims, pages , as originally filed,
pages , as amended under Article 19,
pages , filed with the demand,
pages , received on with the letter of
- ☐ the drawings, pages , as originally filed,
pages , filed with the demand,
pages , received on with the letter of
- ☐ the sequence listing part of the description:
pages , as originally filed
pages , filed with the demand
pages , received on with the letter of

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rules 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the written opinion was drawn on the basis of the sequence listing:

- ☐ contained in the international application in printed form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/fig.

5. ☐ This opinion has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed"

V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**1. Statement**

Novelty (N)	Claims 1-12	YES
	Claims 13	NO
Inventive step (IS)	Claims 1-12	YES
	Claims 13	NO
Industrial applicability (IA)	Claims 1-13	YES
	Claims	NO

2. Citations and explanations

D1 - US 6362175

D2 - US 4541438

D3 - US 6060324

D4 - US 5736320

NOVELTY (N) Claim 13

None of the citations disclose a method for determining the antioxidant status and/or capacity to moderate oxidative stress by contacting the sample with a fluorescing porphyrin compound.

The closest prior art is D1 which discloses the use of phosphorescent porphyrin compounds for imaging molecular oxygen. Claim 13 is directed at a kit of components intended for use in the method of claims 1 or 6 but is not considered to be strictly limited to being used only in these methods and the feature of a relevant set of instructions is not considered as a feature that can convey novelty. D4 discloses the components of the claimed kit including fluorescing porphyrins such as tetraphenylporphyrin, although the intended use is different. It is therefore considered that claim 13 lacks novelty in the light of D4.

INVENTIVE STEP (IS) Claim 13

No single document or obvious combination of documents suggested the invention claimed in claims 1-12.

Claim 13 lacks an inventive step for the reasons given above.